

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA

1 UNITED STATES OF AMERICA ) Greensboro, North Carolina  
2 ) October 15, 2014  
3 vs. ) 2:23 p.m.  
4 )  
5 BRIAN DAVID HILL, )  
6 Defendant. ) Case No. 1:13CR435-1  
7 )

TRANSCRIPT OF STATUS CONFERENCE  
BEFORE THE HONORABLE WILLIAM L. OSTEEEN, JR.  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

10 For the Government: ANAND P. RAMASWAMY, AUSA  
11 Office of the U.S. Attorney  
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Greensboro, North Carolina 27401

13 For the Defendant: JOHN SCOTT COALTER, ESQUIRE  
14 McKinney Perry & Coalter, PA  
15 PO Box 1800  
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22 Court Reporter: Joseph B. Armstrong, RMR, FCRR  
23 324 W. Market, Room 101  
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24 Proceedings reported by stenotype reporter.  
25 Transcript produced by Computer-Aided Transcription.

P R O C E E D I N G S

(At 2:23 p.m., proceedings commenced.)

(Defendant present.)

THE COURT: All right. Mr. Ramaswamy, you may call the next case.

MR. RAMASWAMY: Thank you, Your Honor. The Government would call for status conference United States versus Brian David Hill in 1:13CR435-1 represented by Mr. Coalter, and Ms. Tapp is here from the Probation Office.

THE COURT: Good afternoon, Mr. Coalter.

MR. COALTER: Good afternoon, Your Honor.

THE COURT: I suspect -- you may have a seat, Mr. Hill. I suspect at this point that you are probably fully up to speed, but I'll give you at least a thumbnail sketch from my perspective, and then we can see where we are and what needs to happen next.

But Mr. Hill entered a plea of guilty in this matter some time ago, and it was either comments at the time of the plea hearing, the plea agreement or -- the plea agreement or some later time, but somewhere along the line I learned or was under the impression that because of a variety of issues that this was a case -- well, the plea agreement says the Government wouldn't oppose a couple of departure grounds, but I had the impression that the Government ultimately would likely either not be objecting to a sentence other than an active sentence or

1 was not seeking an active sentence in this particular case.

2           The presentence report was disclosed, and you know  
3 what the guideline range was in the report. After disclosure  
4 of the presentence report, Mr. Hill then went on a letter  
5 writing campaign proclaiming his -- first, his desire to  
6 withdraw his guilty plea, and then proclaiming his innocence,  
7 and then proclaiming a lot of different things.

8           I initially had a hearing on it -- hearing on the  
9 question of whether Mr. Placke should be permitted to withdraw  
10 and denied the motion and, quite candidly, even in light of  
11 some of the allegations that Mr. Hill had made, did not believe  
12 that in light of Mr. Hill's conditions that Mr. Hill's  
13 statements and proclamations should result in his losing  
14 acceptance of responsibility in this case. We then proceeded  
15 ahead. The letter writing continued, and the complaints about  
16 Mr. Placke continued.

17           Now, at some point in there -- I am going to add this  
18 as well. One of Mr. Hill's motions speaking to withdraw his  
19 plea claimed that he was unfairly pressured by both Mr. Placke  
20 and his family members to enter a plea.

21           The last hearing, some time before the hearing, a  
22 lawyer, I believed licensed in California and Illinois, took it  
23 upon herself initially to send Mr. Placke an affidavit  
24 proclaiming Mr. Hill's innocence and offering something in the  
25 nature of an explanation as to how a number of other

1 individuals had been set up with child pornography, and  
2 apparently when nothing occurred in response to sending that  
3 affidavit, she then took it upon herself to send it to me with  
4 the request that I consider that affidavit, and Mr. Hill's  
5 letter writing continued. And at that last hearing, Mr. Hill's  
6 grandparents when I inquired of them also proclaimed Mr. Hill's  
7 innocence.

8           To be completely candid, Mr. Coalter, it appeared to  
9 me that this -- that there was some issues that existed in this  
10 case following disclosure of the presentence report; but after  
11 talking to the grandparents, it appeared to me there was now  
12 some complications in this case arising from information that  
13 this lawyer had been apparently been providing to and  
14 discussing not only with Mr. Hill, this Court, and Mr. Placke,  
15 but to the grandparents as well. You might imagine that I am a  
16 little disturbed by an attorney sending an affidavit to a Court  
17 proclaiming the innocence of an individual.

18           Having said all that, I let Mr. Placke out of the  
19 case, set this case on for status conference, continued the  
20 sentencing hearing at which time -- and also gave notice of my  
21 consideration of withdrawing acceptance of responsibility from  
22 Mr. Hill and having a hearing on that. Any such hearing on  
23 that, in my opinion, would necessarily involve testimony from  
24 this attorney, wherever she may be --

25           MR. COALTER: Right.

1           THE COURT:  -- who has seen -- who has taken it upon  
2 herself to argue Mr. Hill's innocence in this Court.

3           Now, you are counsel for Mr. Hill.  I don't know  
4 where you wanted to proceed.  But before I go to the steps of  
5 summonsing a lawyer from somewhere in the Midwest or the West  
6 to a hearing, I want to make sure where things stand with you.  
7 In other words, are you going to be ready to go and want to  
8 proceed forward with a sentencing on a particular date, or do  
9 you need additional time, or where do things stand with you?

10          MR. COALTER:  I believe I can have a position  
11 paper -- well, first of all, Your Honor, I've reviewed the file  
12 on Pacer and reviewed most of the documents, went down and met  
13 with Mr. Hill in custody, discussed his options with him,  
14 received discovery from Mr. Ramaswamy, reviewed the evidence  
15 with Mr. Hill to determine, number one, were there grounds to  
16 withdraw the guilty plea, number two, is that something that  
17 would be in his best interest, and determined, along with  
18 Mr. Hill, that the answer to both of those questions was that  
19 there are no grounds, and he doesn't want to withdraw his  
20 guilty plea.  I advised him that I'm his attorney and that any  
21 filings with the Court should come through me and that I would  
22 not be adopting any of his prior pro se filings.

23          I believe that -- I don't see any reason why I can't  
24 be prepared by November 7 for sentencing in this matter.  I've  
25 discussed the matter with Mr. Ramaswamy and am prepared to

1 proceed. I've also met with both his grandparents and his  
2 mother, gone over the discovery with them, explained the  
3 situation, explained where Mr. Hill stands, and I think we're  
4 prepared to proceed to sentencing.

5 I did have some conversation with the out-of-state  
6 attorney and, to put it bluntly, don't put a lot of stock in  
7 what she has to say.

8 THE COURT: All right. How much time do you need to  
9 file sentencing pleadings?

10 MR. COALTER: I think I can get something together by  
11 the end of next week.

12 THE COURT: Where does that put us? Let's see.  
13 Today is the 15th.

14 MR. COALTER: I think by the 24th.

15 THE COURT: The 24th? Mr. Ramaswamy, I'm guessing  
16 there won't be much of an objection, if anything, to the  
17 filings from Mr. Coalter.

18 MR. RAMASWAMY: That's correct, Your Honor.

19 THE COURT: I'll give you, let's say -- 24th, 31st.  
20 Mr. Coalter I'll just go ahead and give you until Monday  
21 October 27, 2014, to file any pleadings that you wish to file,  
22 and I'll give the Government until Tuesday, November 4, to file  
23 any responses they desire to file, if any are necessary.  
24 Sentencing is set for Friday.

25 All right. Then thank you, Mr. Coalter, for that

1 update. That now leaves me to discuss with both you and  
2 Mr. Ramaswamy what I'm going to do about this lawyer that's  
3 sending these -- this affidavit in. Mr. Ramaswamy, let me hear  
4 from you first. Anything -- do you have any further thoughts  
5 on it? I think my direction was that the Government was to  
6 subpoena, but that may or may not -- one of the reasons I set  
7 this on for a status conference was to see where we could go  
8 with that or if I needed to do something else. So where do we  
9 stand on that?

10 MR. RAMASWAMY: I believe, Your Honor, Mr. Barrett  
11 and Ms. Hairston have -- may have stated to the Court  
12 previously by policy we do not subpoena attorneys. The  
13 attorney herself, if I might state, called me after the hearing  
14 last, and that was because the grandparents had contacted her.  
15 It would be the Government's position that having her present  
16 for the sentencing would not be necessary. I can elaborate if  
17 the Court wishes, but --

18 THE COURT: I sure do.

19 MR. RAMASWAMY: In what is ECF Document No. 45, that  
20 is, the affidavits filed by the defendant's grandparents and  
21 starting on page 7, they go into the offense conduct paragraph  
22 by paragraph in the presentence report. During the last  
23 hearing, I know the Court inquired of them if they knew of the  
24 evidence against the defendant and if they had seen the  
25 evidence, and they said they hadn't, didn't wish to, but it

1 would appear as they go point by point that they do, in fact,  
2 have a copy of the presentence report based on -- but it does  
3 not appear to the Government that their efforts to reach out to  
4 Ms. Basko have given her anything of the offense conduct, that  
5 is, their side of maintaining his innocence being set up by  
6 someone else.

7           As to the defendant's sentencing, I don't know that  
8 it's helpful in any regard to have Ms. Basko here, having  
9 spoken with her once, having received a previous email from  
10 her, and based on some of the other things not only in her  
11 unsworn affidavit but her two websites.

12           THE COURT: Didn't she sign the affidavit under  
13 penalty of perjury?

14           MR. RAMASWAMY: Well, it is signed that way, but it  
15 is not -- there is no attestation. It's not -- in contrast to  
16 the grandparents' affidavit, it's not in front of a notary,  
17 Your Honor.

18           THE COURT: Is that the only way to submit a sworn  
19 statement to a court --

20           MR. RAMASWAMY: Well, I think --

21           THE COURT: -- signed by a notary?

22           MR. RAMASWAMY: In terms of form itself, it's not the  
23 only irregularity, I think, in terms of the way its captioned.  
24 Both this affidavit from Ms. Basko and the ones from both  
25 grandparents appear to be items they wish to have appeared in



1 the presentence report. They're attempting to rebut facts that  
2 are in the presentence report and have it appear before the  
3 Court that way. I don't know -- I can't answer as to the form  
4 in which it appears, how it's captioned, how it's addressed,  
5 concluding the caption with any --

6 THE COURT: If you, as an attorney, stood up in front  
7 of me and say "Your Honor, I say, under penalty of perjury,  
8 that Ms. Hairston is sitting right behind me," is that a sworn  
9 statement to me or not?

10 MR. RAMASWAMY: I think it's a different matter for  
11 an attorney appearing before you, Your Honor.

12 THE COURT: And how so? That's what I'm trying to  
13 get at.

14 MR. RAMASWAMY: I mentioned this before at the last  
15 hearing. There are a number of people associated with  
16 Mr. Hill, and this is not the only letter, the ones that come  
17 into court --

18 THE COURT: It's the only one I got.

19 MR. RAMASWAMY: I understand, Your Honor, but they --

20 THE COURT: Let me explain my problem and my concern.  
21 I don't know where Mr. Hill came up with this idea that  
22 claiming his innocence in these grandiose scheme set out in  
23 here came from, but in this case the grandparents were  
24 communicating with this attorney. Mr. Hill appeared to be  
25 communicating in some fashion with this attorney. She did not

1 say, "I don't think he didn't do it." She didn't qualify it.  
2 She sent a letter to me -- when it was not acted upon by the  
3 counsel of record, she sent it to me stating under penalty of  
4 perjury that he was innocent of these charges -- of this  
5 charge.

6           So I've got to decide, number one, what sentence to  
7 impose and, number two, whether he gets acceptance of  
8 responsibility or not, which is a big factor in the whole  
9 analysis. And as I said last time, if he did this on his own,  
10 then that says one thing. Perhaps it doesn't change anything  
11 in light of his condition. But if he was somehow urged to do  
12 this with the support of an out-of-state attorney, it doesn't  
13 seem to me to make any difference whether she's standing here  
14 in front of me and says that or takes it upon herself to send  
15 that to me in this courtroom.

16           So you're right. There is a piece of this that may  
17 or may -- may not be helpful in terms of evaluating acceptance  
18 of responsibility, but an attorney who sends an af -- a claimed  
19 affidavit signed -- or sends a document to a judge signed under  
20 penalty of perjury the defendant's innocent, at a minimum -- I  
21 mean, it's hard for me to see how she hasn't somehow tried to  
22 subject herself to the jurisdiction of this court.

23           MR. RAMASWAMY: Just a couple of points. I know the  
24 Court in previous hearings, one at a status conference and at  
25 the last hearing, has dealt with the defendant's pro se

1 motions, and part of that is in relation to his condition.  
2 There's been some attribution of those motions, I think rightly  
3 so, in relation to his condition.

4 I don't know at what point -- according to  
5 Ms. Basko's affidavit, she received materials from him prior to  
6 his federal arrest. So I don't know at what point, such as  
7 today when he is not seeking to go forward with any of those  
8 prior motions, that she was contacted, and she was given  
9 information or if she's aware, as is the case today, and  
10 doesn't wish to proceed upon those things.

11 And as to sentencing, it would appear to the  
12 Government that it's a collateral matter. I understand the  
13 Court's concern, especially as it affected Mr. Placke's ability  
14 to deal with Mr. Hill in this case. But it would appear based  
15 on the affidavit to the grandparents that this person was not  
16 given a full picture of this case. I'm not speaking in defense  
17 of her, but I don't know that -- it wouldn't be helpful to the  
18 Government to have her here as a witness.

19 THE COURT: So the Government is not going to  
20 subpoena her?

21 MR. RAMASWAMY: No, Your Honor.

22 THE COURT: Yes, sir, Mr. Coalter?

23 MR. COALTER: Your Honor, at the risk of butting in  
24 when I shouldn't, I also had a conversation with her. Would  
25 just indicate when I started questioning her about any

1 experience in criminal law, criminal defense, she had none,  
2 Your Honor. She's apparently an entertainment lawyer --

3 THE COURT: I mean, what she wrote borders on  
4 entertainment. Pardon my frivolity with respect to this, but  
5 that's about what it amounts to. But sending it to a judge --  
6 if the Government's not going to subpoena her because they  
7 don't think it helps their case, then --

8 MR. COALTER: I understand. I just thought that I  
9 would add that, Your Honor. I certainly, after speaking with  
10 her for a brief period of time, came to the conclusion that I  
11 would not put any stock in anything she had to say, especially  
12 after --

13 THE COURT: That's my -- that's my point, in part.  
14 She may be crazy. I don't know what she is. But writing it  
15 down and sending it to a judge in the midst of a sentencing  
16 proceeding and urging on the defendant and his family?

17 MR. COALTER: I understand.

18 THE COURT: Not wanting to make an appearance? I  
19 mean, I'll consider whether I -- I mean, I'm sorry for her  
20 sake, but I'm not finished with this. If the Government is not  
21 interested in subpoenaing her, then I'll consider whether I can  
22 issue an order directing her appearance here on the 7th.

23 Anything further, Mr. Coalter?

24 MR. COALTER: No, Your Honor.

25 THE COURT: Mr. Ramaswamy?

1 MR. RAMASWAMY: No, Your Honor.

2 THE COURT: All right. We'll be adjourned.


3 (At 2:43 p.m., proceedings concluded.)

4 \* \* \* \* \*

5 C E R T I F I C A T E

6 I certify that the foregoing is a correct transcript  
7 from the proceedings in the above-entitled matter.

8  
9 Date: 06/24/2015

  
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